

# North Dakota Developmental Disabilities Division

Transition Planning for Compliance with  
New Federal Regulations



# Overview of the Federal Regulations

A final rule (CMS 2249F) was issued in January 2014 that affects home and community-based services (HCBS) provided through Medicaid waivers. The new regulations:

1. Provide a new definition of a home and community-based setting
2. Define person-centered planning requirements and conflict of interest standards for case management
3. Require states to develop transition plans for bringing all HCBS settings into compliance

The objective is to ensure that HCBS waiver participants can enjoy the benefits of living, working, and participating in their communities alongside all other residents.

# HCBS Settings Requirements Overview

All Medicaid HCBS settings must:

- Be integrated in the community and provide full access to the greater community
- Be selected by the individual from among multiple setting options
- Support the individual's choice of services and supports
- Ensure privacy, dignity, respect, and freedom from coercion and restraint

The rules applies to both residential and day settings

- Guidance for residential settings available on CMS's website
- CMS plans to issue additional guidance about day settings in the future

# HCBS Settings Requirements Overview

Individuals in all HCBS residential settings should be able to have:

- Freedom to control their own schedules
- Privacy in their living unit
- Freedom to furnish or decorate their unit as they wish
- Choice of roommates
- Access to food at any time
- Visitors at any time

If any right is not met for health or safety reasons must be explained and documented in the individual's person-centered service plan

# HCBS Settings Requirements Overview

Requirements for provider owned or controlled residential settings:

- Certain requirements further scrutinized
- Legally enforceable agreement or lease must be in place
  - Same responsibilities/protections from eviction as all tenants under landlord tenant law
- Modifications are documented and justified in the individual's person-centered service plan

# HCBS Settings Requirements Overview

Settings CMS considers NOT Home and Community-Based:

- Nursing Facility
- Institution for mental diseases
- Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- Hospital

# HCBS Settings Requirements Overview



## Settings CMS considers PRESUMED NOT to be Home and Community Based:

- Are located in/on the grounds of/adjacent to a public institution
- Are in a publicly or privately-owned facility providing inpatient treatment
- Have the effect of isolating individuals from the broader community, such as:
  - Farmsteads in rural areas
  - Gated communities for people with disabilities
  - Residential schools
  - Multiple settings

States submit evidence demonstrating settings have qualities of home and community-based settings and go through CMS heightened scrutiny

# Person-Centered Planning Overview

The person-centered planning process must:

- Allow the individual to lead the process, when possible
- Include family members, friends, and others selected by the individual
- Provide individuals with necessary information to make informed decisions about their choice of available services and providers
- Reflect the individual's strengths, preferences, goals and desired outcomes



# ND Transition Planning



Compile survey results and information into how the settings conform to the new CMS rules

- Settings meet HCBS characteristics
- Settings do not meet HCBS characteristics but may
  - Propose changes to conform to HCBS
  - Presumptively non-HCBS settings but submit evidence to CMS
- Settings cannot meet HCBS characteristics

September DD Stakeholder Meetings-review and information gathering

October 15<sup>th</sup> Statewide Stakeholder Meeting-review all ND's Home and Community Based waivers

# ND Transition Planning



- DHS must submit a “statewide transition plan” to CMS that addresses how it will comply with the HCBS settings requirements for all 6 Medicaid 1915(c) waivers:
  1. Traditional IDD/DD HCBS Waiver
  2. Elderly and Disabled HCBS Waiver
  3. Children’s Autism Waiver
  4. Children’s Hospice Waiver
  5. Technology Dependent Waiver
  6. Medically Fragile Children Waiver
- Plan is due to CMS in November 2014
- DHS will post the transition plan for 30-day public comment on  
**October 15, 2014!**

# Transition Planning: ND DDD's Process

## Considerations:

- Opportunity to provide rationale to CMS settings do meet the definition of HCBS
  - providing information indicating that individual outcomes are met.
  - collaborative effort as partners
- Settings may only require programmatic or procedural changes to comply with the new rules
- Information gathering included identifying big picture issues and challenges that will impact the service delivery
  - high rents
  - sharing of staff due to staff shortages
  - Individual choice to live in settings not meeting the definition but in close proximity to desired community locations
  - handicapped accessibility
  - stewardship of public funds
  - rural areas

# Transition Planning: ND DDD's Process

## Assessment Process Phase 1:

- Surveys sent to all DD Licensed Providers
- Evaluated all current residential and non-residential

MSLA

SLA

ISLA

TCLF

Congregate Care

Day Supports

Extended Services

FCOIII

- Did not include

ICF/IID

FCO

Infant Development

IHS

# Transition Planning: ND DDD's Process

## Preliminary Report Phase 1:

- Data submitted by the providers
- Used criterion provided in the CMS guidance and toolkit to initially categorize the settings
  - characteristics that have the potential for isolating individuals receiving HCBS from the broader community
  - identify settings that are presumed to have the qualities of an institution according to CMS
  - additional conditions for provider owned or controlled settings required by CMS

# Transition Planning: ND DDD's Process

## Provider Survey Questions examples:

- Do the consumers have frequent interaction with the community?
- Is the setting in the community among other private residences and retail businesses?
- Is the setting located in a building on the grounds of, or immediately adjacent to a public institution?
- Is the setting designed specifically for people with disabilities, and often even for people with a certain type of disability?
- Do you have multiple settings co-located and operationally related that congregate a large number of people with disabilities together and provide for significant shared programming and staff?
- Who owns the building/home and do the consumers have a lease with who owns the building/home?

# Transition Planning: ND DDD's Process

## Preliminary Report Categories:

1. Settings presumed to meet HCBS characteristics and no action needed unless concerns are identified during the review process
2. Settings that raise concerns or could not be initially categorized without additional information
3. Settings presumably not HCBS which may require heightened scrutiny and require additional information

# Transition Planning: ND DDD's Process

## Assessment Process Phase 2:

- Submitted preliminary Report
  - Each Regional Human Service Center
  - Each DD Licensed Provider
- Settings listed under the 3 preliminary categories
- Sought follow up on settings which
  - raised concerns or required further information
  - preliminarily fell within the CMS description of settings that typically do not meet HCBS definition



# Transition Planning: ND DDD's Process

## Survey Monkey Questionnaires:

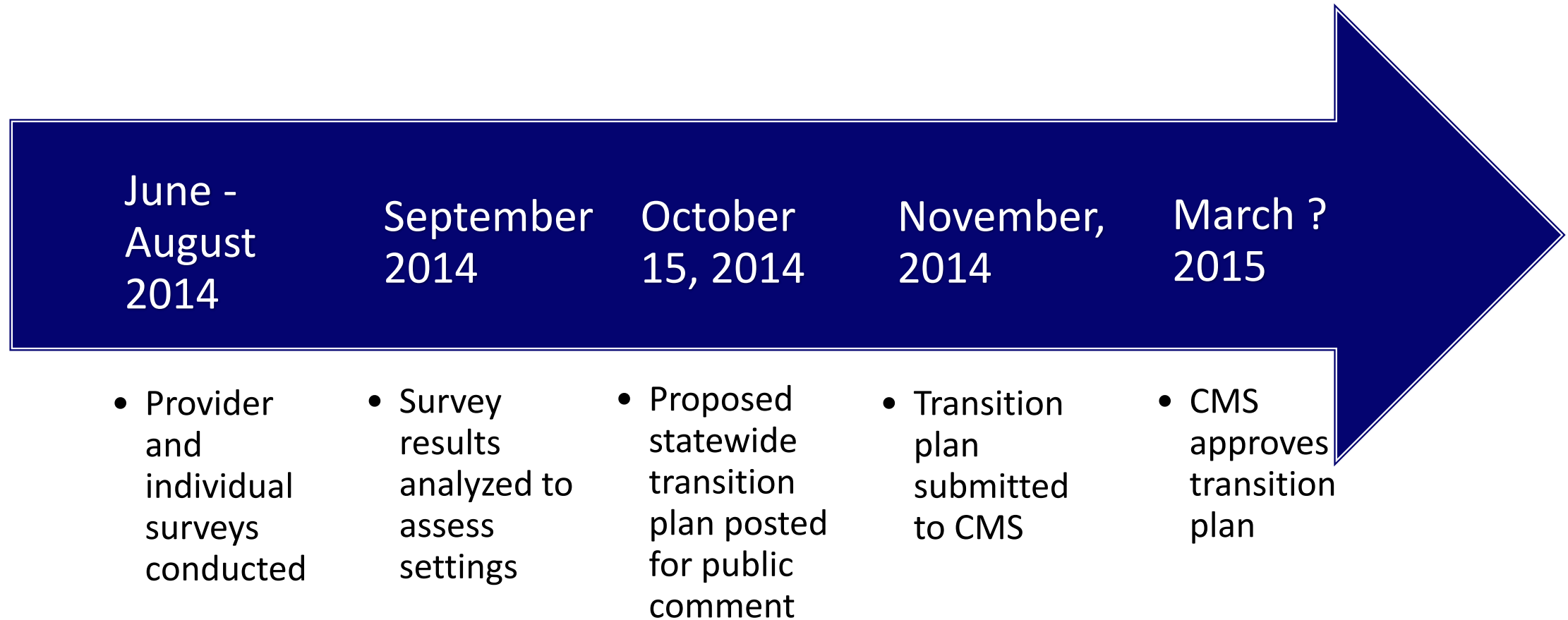
- Residential and day supports
- Captured individual experiences and outcomes in the setting
- Provided additional information toward validating that settings have the CMS defined qualities and characteristics, and where improvements may need to be made with changes
- Regional Human Service Center completed
  - Settings that raise concerns or could not be initially categorized without additional information
  - Settings presumably not HCBS which may require heightened scrutiny and require additional information

# Transition Planning: ND DDD's Process

## Survey Monkey Question examples:

- Was the setting chosen by the individual?
- Does the individual share a bedroom; continue to want to share a bedroom with this roommate?
- Does the individual regularly access the community and as they choose?
- If the individual doesn't work and would like to, are there activities that ensure the option is pursued?
- Does the individual have choices in their schedule?
- Does the individual have privacy as needed and when necessary?
- Does the individual have access to common areas of the setting; to a phone, their mail, their money, and food?

# ND IDD/DD Waiver Transition Planning



# ND Preliminary Results



- **Physical location – residential and day settings**
  - 4 settings are on the grounds of Life Skills and Transition Center which is a public institution
  - There are a number of day support settings that are located in community ICF/ID's which are institutions
  - Many settings are located in close proximity with other settings/residences
    - This is not necessarily a problem, as long as they do not isolate individuals
    - Further assessment is in progress to assess the environmental characteristics of these settings to review their level of integration and access to the greater community

# ND Preliminary Results – Residential Settings

## The majority of settings (97 percent):

Reflect and support clients' choices, needs, and preferences

Allow clients to furnish and decorate the unit as they choose

Allow clients to access the community as they choose

Allow clients to determine their own schedules

Allow for privacy as needed

Do not restrict visitors to certain visiting hours

Allow clients to access common areas

Are an environment where clients are treated with dignity and respect

- About 5 percent of respondents were not given a choice of setting

# ND Preliminary Results – Day Settings

## The majority of settings ( 97 percent)

Reflect and support clients' choices, needs, and preferences

Allow for privacy as needed

Are an environment where clients are treated with dignity and respect

Allow for access to common areas except when approved through the person-centered service plan

- About 3 percent of clients were not given a choice of day setting
- About 5 percent of clients who wish to work said they were not provided opportunities to explore employment

# Final Rule Medicaid HCBS



CMS HCBS Regulations was an overview. For the full rules and more information please visit:

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

# ND IDD/DD Waiver Transition Planning



**Questions?**